

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

<b>DATREC, LLC,</b>	)	
<b>Plaintiff,</b>	)	
	)	<b>Civil Action No. 6:20-cv-1106</b>
<b>v.</b>	)	
	)	
<b>ATHENA HEALTH, INC.</b>	)	<b>JURY TRIAL DEMANDED</b>
<b>Defendant.</b>	)	

**PLAINTIFF’S ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

DatRec, LLC (“DatRec”) files this Original Complaint and demand for jury trial seeking relief from patent infringement of the claims of U.S. Patent No. 8,156,158 (“the ‘158 patent”) (referred to as the “Patent-in-Suit”) by Athena Health, Inc.

**I. THE PARTIES**

1. Plaintiff DatRec is a Texas Limited Liability Company with its principal place of business located in Harris County, Texas.

2. On information and belief, Athena Health, Inc. (“Athena”) is a corporation existing under the laws of the State of Texas, with a principal place of business located at 800 W Cesar Chavez St, Austin, TX 78701. On information and belief, Athena sells and offers to sell products and services throughout Texas, including in this judicial district, and introduces products and services that perform infringing methods or processes into the stream of commerce knowing that they would be sold in Texas and this judicial district. Defendant may be served with process by their registered agent, Cogency Global Inc., 1601 Elm St., Suite 4360, Dallas, TX 75201.

## **II. JURISDICTION AND VENUE**

3. This Court has original subject-matter jurisdiction over the entire action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because Plaintiff's claim arises under an Act of Congress relating to patents, namely, 35 U.S.C. § 271.

4. This Court has personal jurisdiction over Defendant because: (i) Defendant is present within or has minimum contacts within the State of Texas and this judicial district; (ii) Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in this judicial district; and (iii) Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Texas and in this judicial district.

5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b). Defendant has committed acts of infringement and has a regular and established place of business in this District. Further, venue is proper because Defendant conducts substantial business in this forum, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in Texas and this District.

## **III. INFRINGEMENT**

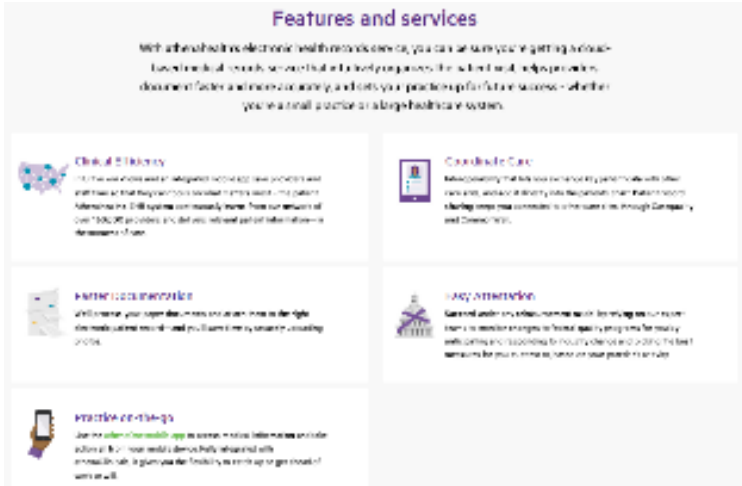
### **A. Infringement of the '158 Patent**

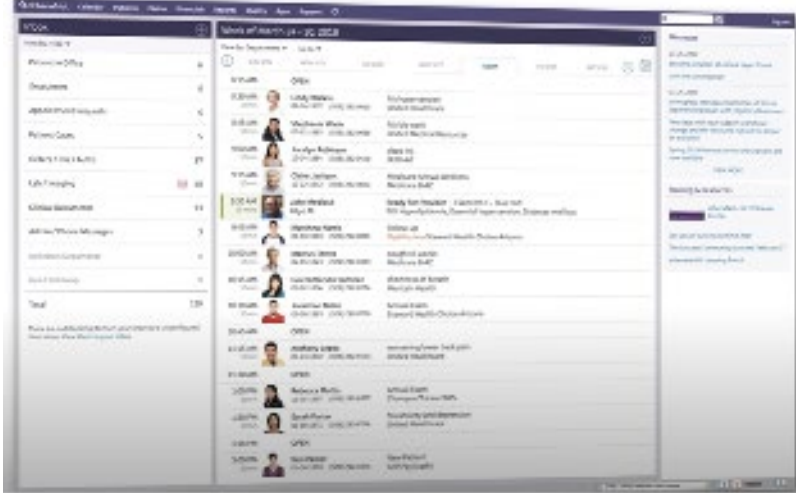
6. On April 10, 2012, U.S. Patent No. 8,156,158 ("the '158 patent", attached as Exhibit A) entitled "Method and System for Use of a Database of Personal Data Records" was duly and legally issued by the U.S. Patent and Trademark Office. DatRec, LLC owns the '158 patent by assignment.

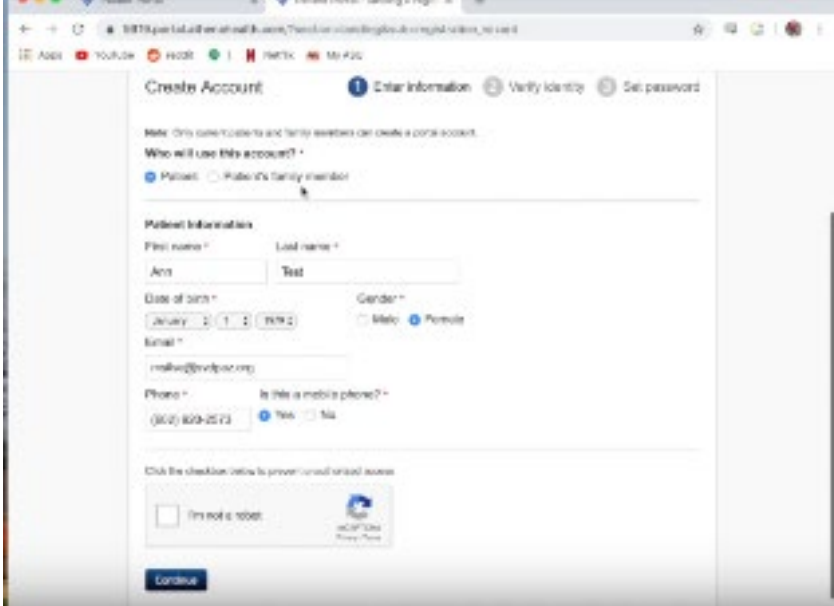
7. The '158 patent relates to a novel and improved manner of constructing a verified database of identified individuals capable of processing with a subgroup of at least one medical application.

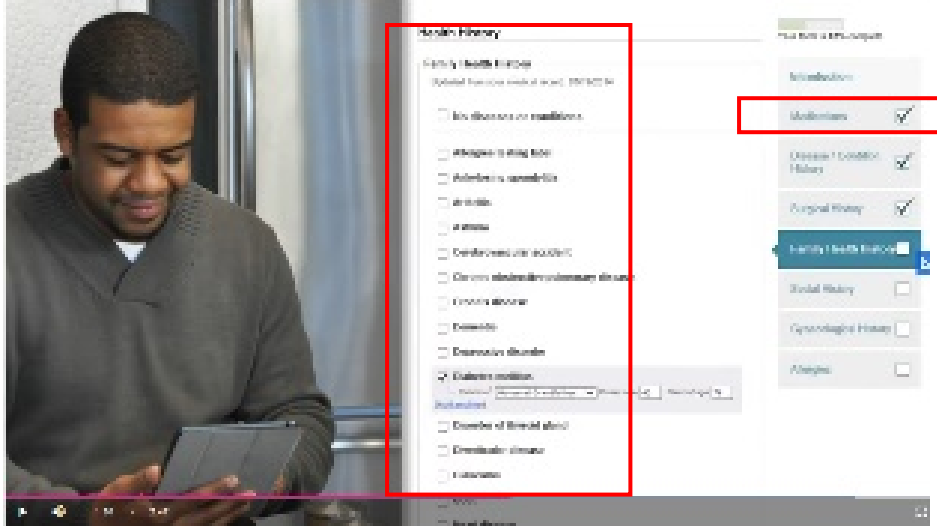
8. Athena maintains, operates, and administers electronic health records that infringes one or more claims of the '158 patent, including one or more of claims 1-23, literally or under the doctrine of equivalents. Defendant put the inventions claimed by the '158 Patent into service (i.e., used them); but for Defendant's actions, the claimed-inventions embodiments involving Defendant's products and services would never have been put into service. Defendant's acts complained of herein caused those claimed-invention embodiments as a whole to perform, and Defendant's procurement of monetary and commercial benefit from it.

9. Support for the allegations of infringement may be found in the following preliminary table:

Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
A method for using and managing a database, the method comprising:	<p>Plaintiff contends that Athenahealth EHR provides a system and/or method for using and managing a database:</p>  <p><b>Attachment 1 (Features And Services (Webpage, 2020)) at 1.</b></p>

Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
	 <p>[Source:  <a href="https://www.youtube.com/watch?v=sV_XqqofmLc&amp;list=PLh8xCXrFOv_gJeoZIWzIqtyvD2IP4vF9u&amp;index=4">https://www.youtube.com/watch?v=sV_XqqofmLc&amp;list=PLh8xCXrFOv_gJeoZIWzIqtyvD2IP4vF9u&amp;index=4</a> (at 0:06)]</p>
<p>providing a verified database of a plurality of identified individuals, the verified database comprising a plurality of individual-identifier data sets (IDSs) and relationship data; and</p>	<p>Plaintiff contends that a verified database of a plurality of identified individuals is provided which comprises a plurality of individual-identifier data sets (IDSs) and relationship data.</p> <p>The following exemplifies this limitation's existence in Accused Systems:</p> <div data-bbox="397 1354 1205 1480"> <p>With athenahealth's electronic health records service, you can be sure you're getting a cloud-based medical records service that intuitively organizes the patient visit, helps providers document faster and more accurately, and sets your practice up for future success - whether you're a small practice or a large healthcare system.</p> </div> <p><b>Attachment 1 (Features And Services (Webpage, 2020)) at 1.</b></p>

Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
	<p><u>athenahealth's database, the digital byproduct of providing electronic health records, billing, and a variety of other services for healthcare providers on a single, shared network – gives us an unprecedented, near real-time view of the activities of health systems and medical groups nationwide.</u></p> <p><b>Attachment 2 (What Makes A Physician Network High-Performing? (2017)) at 1 of 5.</b></p> <div data-bbox="407 768 813 821" style="border: 1px solid red; padding: 2px;"> <p>170.314(a)(13): Family health history</p> </div> <p><b>Types of Costs:</b> None</p> <p><b>Limitations:</b> athenaClinicals does not support free-text family relations, but does support the following SNOMED-CT-linked family relations: Brother, Daughter, Father, Maternal Aunt, Maternal Grandmother, Maternal Grandfather, Maternal Uncle, Mother, Paternal Aunt, Paternal Grandmother, Paternal Grandfather, Paternal Uncle, Sister, Son, and Unspecific Relation. athenaClinicals also utilizes SNOMED-CT for family health history.</p> <p><b>Attachment 3 (AthenaClinicals (Inpatient) 2014 Edition Certified Health IT Costs And Limitations (2014)) at 6 of 12.</b></p> 

Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
	<p data-bbox="397 266 1328 342">[Source: <a href="https://www.youtube.com/watch?v=WbpZHqP_fGs">https://www.youtube.com/watch?v=WbpZHqP_fGs</a> (at 0:25)]</p>  <p data-bbox="397 1001 1328 1077">[Source: <a href="https://www.athenahealth.com/videos/patient-portal-welcome">https://www.athenahealth.com/videos/patient-portal-welcome</a> (Click on the Video)]</p>
<p data-bbox="99 1115 370 1860">processing said verified database in accordance with one or more parameters or conditions selected in accordance with at least one medical application and creating a sub-group database including data records of the individuals from the verified database having said one or more</p>	<p data-bbox="397 1115 1328 1570">Plaintiff contends that the verified database is processed in accordance with one or more parameters or conditions selected in accordance with at least one medical application and a sub-group database is created (for example, filtering, sorting, etc.) including data records of the individuals from the verified database having said one or more selected parameters or conditions, thereby allowing collection of data comprising one or more selected parameters or conditions and delivery of at least part of the collected data to one or more users. Further, data from the verified database is applied to provide personalized medicine service to at least one of the identified individuals. The following exemplifies this limitation's existence in Accused Systems:</p>

Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
<p>selected parameters or conditions, thereby allowing collection of data comprising one or more selected parameters or conditions and delivery of at least part of the collected data to one or more users and enable to apply data from said verified database to provide personalized medicine service to at least one of said identified individuals;</p>	<div data-bbox="407 260 1284 1052"> <h2 data-bbox="407 260 911 317">EHR Patient Reports</h2> <p data-bbox="407 359 1279 422">Developing Clinical Reports in AthenaClinicals EHR helps to facilitate and support a continuous quality improvement mindset.</p> <p data-bbox="407 516 797 600">These reports enable the practice to analyze clinical data about their patients based on specific information, such as:</p> <ul data-bbox="407 611 683 747" style="list-style-type: none"> <li>• Diagnosis</li> <li>• Lab results</li> <li>• Medications</li> <li>• ADA standards of care</li> </ul> <p data-bbox="407 789 773 842">Reviewing patient reports can support your practice's QDM efforts by:</p> <ul data-bbox="407 852 797 978" style="list-style-type: none"> <li>• Identifying patients not at goal</li> <li>• Finding patients overdue for an office visit</li> <li>• Monitoring ADA standards of care</li> </ul> <p data-bbox="407 1031 431 1052">...</p> </div> <div data-bbox="878 527 1284 978"> <h3 data-bbox="919 579 1227 611">Patient Report Examples</h3> <ul data-bbox="919 621 1252 915" style="list-style-type: none"> <li>• Patients who have not reached their treatment goal based on a lab value (eg, recent HbA1c test) or comorbidity</li> <li>• Patients who are currently uncontrolled and have not had an HbA1c test in greater than 3 months</li> <li>• Patients that are due for QDM metrics such as comprehensive foot and eye exams</li> </ul> </div> <div data-bbox="407 1083 1227 1293"> <h2 data-bbox="407 1083 902 1140">EHR Patient Reports</h2> <p data-bbox="407 1178 1227 1230">Clinical Reports in AthenaClinicals EHR can be used to identify appropriate candidates not at treatment goal and gaps in care.</p> <p data-bbox="407 1241 1138 1293">The following demonstrates how to run clinical reports based upon criteria in AthenaClinicals EHR.</p> </div> <p data-bbox="399 1335 1203 1367"><b>Attachment 4 (EHR Patient Reports (2016)) at 1 and 2 of 6.</b></p>

## Exemplary Claim

## Athenahealth EHR (or athenaClinicals®)

## Query Example #1

Identify patients not at HbA1c goal

- 1 From the **Choose Display Columns** tab, select desired columns from the **Available Display Columns** list (i.e., Patient Last name, Patient First name, etc.).

- 2 From the **Choose & Set Filters** tab, locate **Lab Order Type** from the **Available Filters** list.

...

- 4 In the **Order Genus** field, select **Hemoglobin A1c**.
- 5 Select **Value** in the **Results** option, set the operator to **> (greater than)**, and enter **7** in the value text box.
- 6 Click **Run Report**.

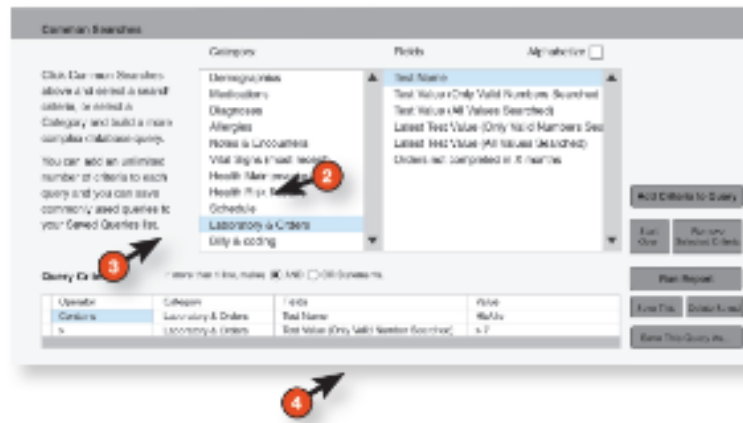
Attachment 4 (EHR Patient Reports (2016)) at 3 and 4 of 6.



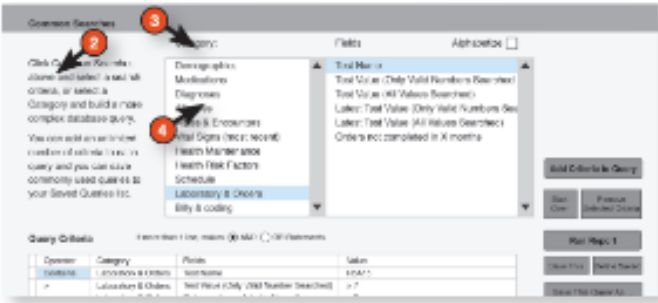
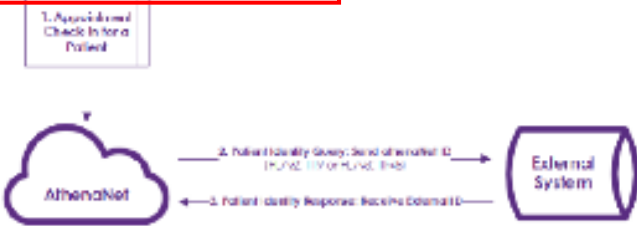

**Exemplary Claim****Athenahealth EHR (or athenaClinicals®)**

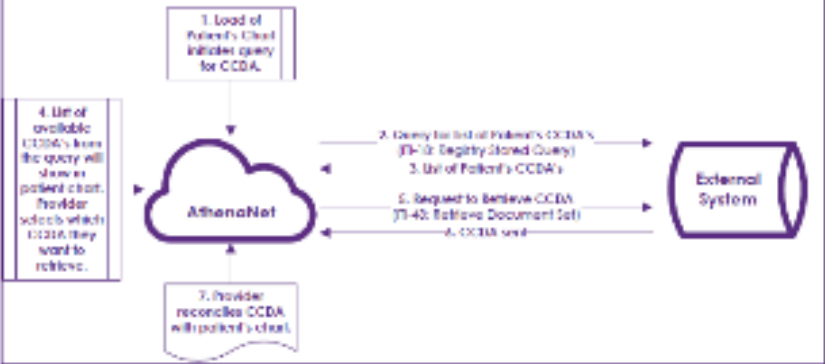

Criteria Example #2: Identify patients who have uncontrolled diabetes and have not had an HbA1c test in greater than 3 months

- 1 As in example 1, from the Choose Display Columns tab, scroll and select **desired columns** from the **Available Display Columns**. From the Choose & Set Filters tab, locate and add **Lab Order Type** to Filter Criteria, and set: **Order Games to Hemoglobin A1c**
- 2 Set the **Results Status** to **Incomplete**.
- 3 Select Date radio button **Relative Date Range**.
- 4 From the Relative Date Range dropdown, choose **Custom**, and set the dates for at least a **3 month range prior to today**.
- 5 Run the report.

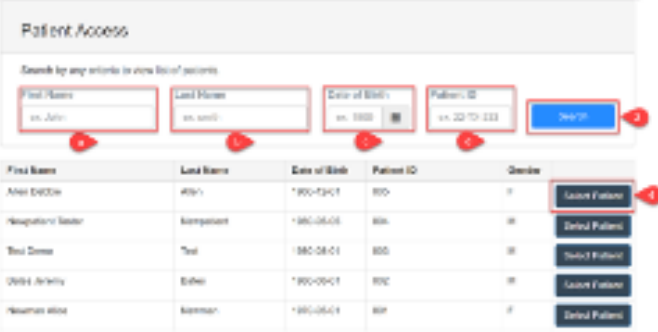


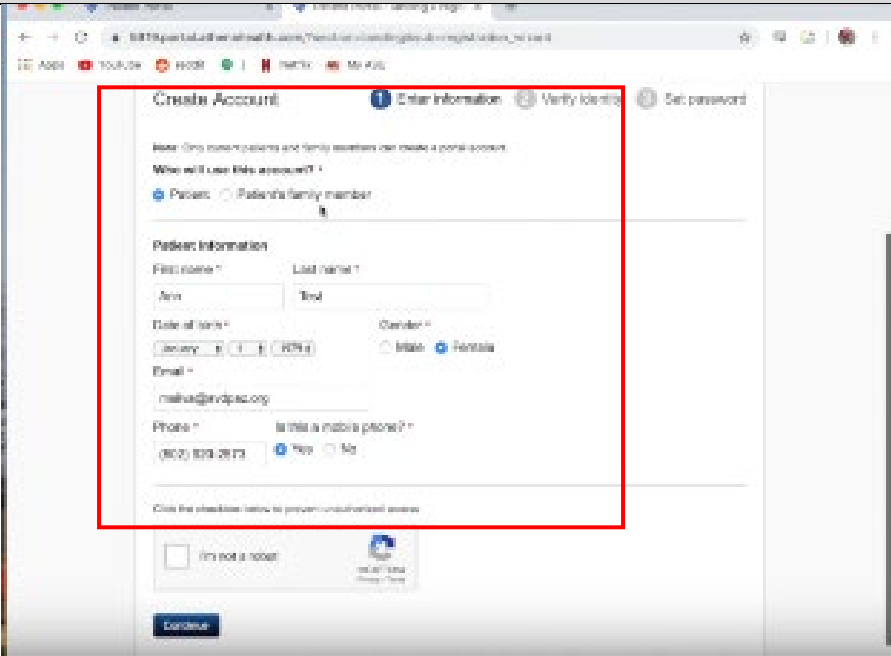
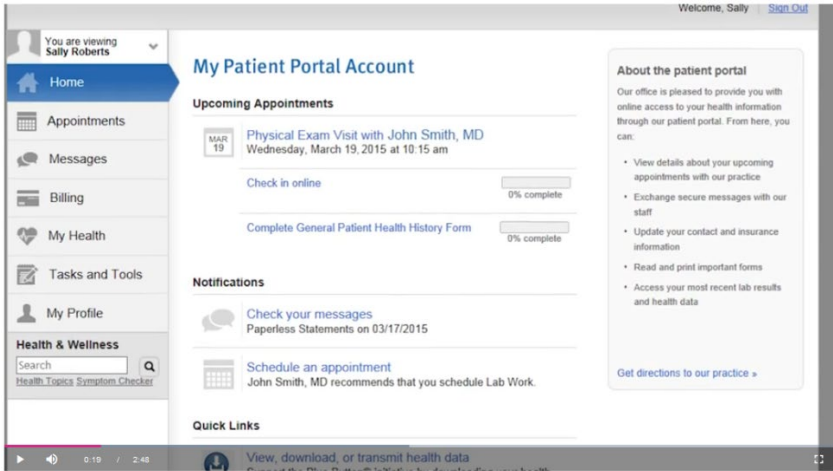
Attachment 4 (EHR Patient Reports (2016)) at 5 of 6.

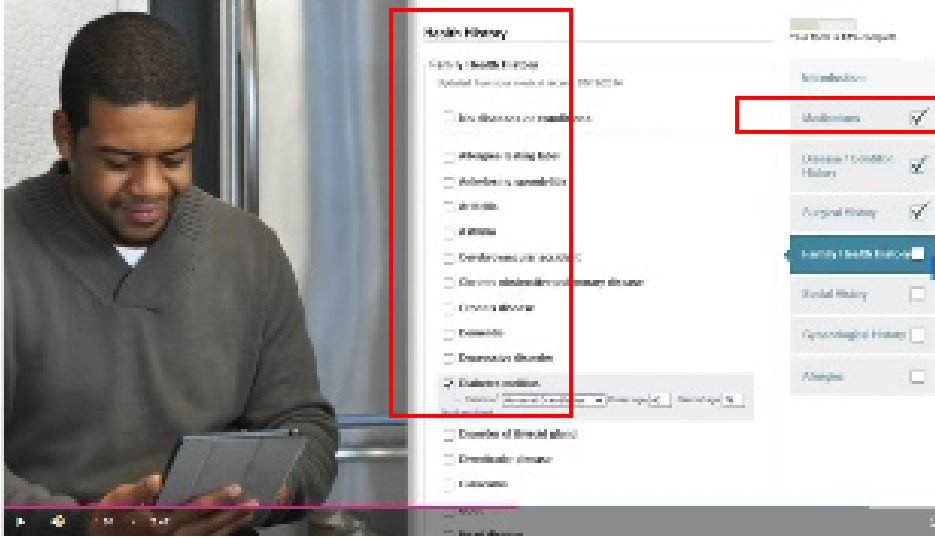
Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
	<p data-bbox="427 281 824 327"><b>Criteria Example #1: Identify diabetic patients who have not had a Foot Exam</b></p> <ol data-bbox="427 405 1013 617" style="list-style-type: none"> <li>1 From the main menu, select <b>Reports, Quality Management</b></li> <li>2 Navigate to the <b>Program/Measure</b> listing.</li> <li>3 Enter <b>diabetes</b> in the Filter by text box. (Results should be similar to the example below.)</li> <li>4 Select Quality Measure <b>CQM123 Diabetes Foot Exam</b>.</li> <li>5 Run the report.</li> </ol>  <p data-bbox="399 984 1122 1020"><b>Attachment 4 (EHR Patient Reports (2016)) at 6 of 6.</b></p> <p data-bbox="399 1121 786 1157"><b>Patient Identity Query (optional)</b></p>  <p data-bbox="591 1451 997 1486"><b>PDQ: Patient Demographic Query</b></p>  <p data-bbox="399 1764 1325 1799"><b>Attachment 5 (Continuity Of Care Document Exchange (2019)) at 7.</b></p>

Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
	<p data-bbox="639 275 992 306"><u>XDS.b: Document Consumer</u></p>  <p data-bbox="396 726 1325 762"><b>Attachment 5 (Continuity Of Care Document Exchange (2019)) at 8.</b></p> <div data-bbox="420 890 505 1010">  </div> <p data-bbox="545 884 773 915"><b>Coordinate Care</b></p> <p data-bbox="545 932 1195 1062">Interoperability that lets you exchange key patient data with other care sites, and add it directly into the patient's chart. Patient record sharing keeps you connected to other care sites through Carequality and CommonWell.</p> <p data-bbox="396 1104 1219 1140"><b>Attachment 1 (Features And Services (Webpage, 2020)) at 1.</b></p>

Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
	<div data-bbox="402 262 974 331"> <h2>ActX Brings Genomic Decision Support to athenaClinicals</h2> </div> <div data-bbox="402 352 1023 445"> <p>ActX's close <a href="#">integration with athenaClinicals</a> makes it simple to practice Precision Medicine. Our Genomic Decision Support™ gives physicians actionable insights from a patient's genetic data – all within the athenaClinicals workflow. The ActX Service is designed for the busy clinician, who does not have to be an expert in medical genetics.</p> </div> <div data-bbox="402 466 1023 491"> <p><a href="#">Check drug-genome interactions as prescriptions are written</a></p> </div> <div data-bbox="402 512 1214 604"> <p>88% of patients carry one or more variants that affect medications. Every time a physician writes a prescription in athenaClinicals, ActX checks the medication against the patient's genetics for issues with adverse effects, efficacy, and dosing. If there are any interactions found, ActX notifies the physician. Our growing Knowledgebase covers most U.S. prescription drugs with sufficient evidence of a genomic impact.</p> </div> <div data-bbox="402 625 755 651"> <h3>Identify actionable hereditary risks</h3> </div> <div data-bbox="402 672 1230 764"> <p>ActX alerts the physician in their normal clinical inbox if actionable medical risks are found based on the patient's genetics. For the 3-4% of patients with serious actionable genetic risks, we provide a summary of evidence-based published recommendations with supporting references. The patient's genetic data is frequently re-analyzed based on the latest knowledge and you will be notified if the analysis changes.</p> </div> <div data-bbox="402 785 1088 810"> <h3>Easily access your patient's Genomic Profile within athenaClinicals</h3> </div> <div data-bbox="402 831 1230 924"> <p>The patient's Genomic Profile is part of the athenaClinicals patient chart – you can view the latest genomic information on the patient at any time. The Genomic Profile includes information about all potential drug-genomic interactions, actionable hereditary risks and carrier statuses for the patient. It is frequently updated to reflect the latest analysis of the patient's genetics.</p> </div> <div data-bbox="402 945 893 970"> <h3>Choose the best service option for your patients</h3> </div> <div data-bbox="402 991 1230 1058"> <p>Physicians have the ability to select the test that's best for their patient. Choose from our ActX Full Service test – including pharmacogenomics, hereditary risks and carrier status – or our ActX Pharmacogenomics Service, which includes pharmacogenomics only.</p> </div> <div data-bbox="402 1092 1325 1171"> <h2>Attachment 6 (Actx Brings Genomic Decision Support To AthenaClinicals (Webpage, 2020)) at 1.</h2> </div>

Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
	<p>5. The Patient Access screen for the selected provider is displayed.</p>  <p>6. Enter one or more of the available search parameters:</p> <ol style="list-style-type: none"> <li><b>First Name:</b> Searches for patients by the entered first name.</li> <li><b>Last Name:</b> Searches for patients by the entered last name.</li> <li><b>Date of Birth:</b> Searches for patients by the entered or selected birth date.</li> <li><b>Patient ID:</b> Searches for patients by the entered patient ID.</li> </ol> <p>7. Select the Search button to display a list of all patients matching the entered search parameters.</p> <p><b>Note:</b> You may simply select the Search button to display a list of all patients.</p> <p>[Source: <a href="https://mydata.athenahealth.com/access-centricity-apis">https://mydata.athenahealth.com/access-centricity-apis</a>]</p>
<p>wherein said providing of the verified database comprises: permitting a plurality of individuals to enter individual-associated data bits (IDBS) into a computerized system, each of the IDBs comprising at least one personal identifier relating to the individual and relationship data comprising data on one or more related individuals</p>	<p>Plaintiff contends that a verified database of a plurality of identified individuals is provided which comprises a plurality of individual-identifier data sets (IDSs) and relationship data. A plurality of individuals is permitted to enter individual-associated data bits (IDBS) into a computerized system, each of the IDBs comprising at least one personal identifier relating to the individual and relationship data comprising data on one or more related individuals and the nature of relationship. The entered IDBs are processed to generate the IDS, one for each identified individual, being either said individual who has entered the individual-associated data bits or one of the related individuals and construct the verified database comprising IDSs of identified individuals. The following exemplifies this limitation's existence in Accused Systems:</p>

Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
<p>and the nature of relationship;</p> <p>processing the entered IDBs to generate the IDS, one for each identified individual, being either said individual who has entered the individual-associated data bits or one of the related individuals and construct the verified database comprising IDSs of identified individuals.</p>	 <p>[Source: <a href="https://www.youtube.com/watch?v=WbpZHqP_fGs">https://www.youtube.com/watch?v=WbpZHqP_fGs</a> (at 0:25)]</p>  <p>[Source: <a href="https://www.athenahealth.com/videos/patient-portal-welcome">https://www.athenahealth.com/videos/patient-portal-welcome</a> (Click on the Video)]</p>

Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
	 <p>[Source: <a href="https://www.athenahealth.com/videos/patient-portal-welcome">https://www.athenahealth.com/videos/patient-portal-welcome</a> (Click on the Video)]</p> <p>170.314(a)(13): Family health history</p> <p><b>Types of Costs:</b> None</p> <p><b>Limitations:</b> athenaClinicals does not support free-text family relations, but does support the following SNOMED-CT-based family relations: Brother, Daughter, Father, Maternal Aunt, Maternal Grandmother, Maternal Grandfather, Maternal Uncle, Mother's, Paternal Aunt, Paternal Grandmother, Paternal Grandfather, Paternal Uncle, Sister, Son, and Unspecific Relation. athenaClinicals also utilizes SNOMED-CT for family health history.</p> <p><b>Attachment 3 (AthenaClinicals (Inpatient) 2014 Edition Certified Health IT Costs And Limitations (2014)) at 6 of 12.</b></p> <p><u>athenahealth's database, the digital byproduct of providing electronic health records, billing, and a variety of other services for healthcare providers on a single, shared network – gives us an unprecedented, near real-time view of the activities of health systems and medical groups nationwide.</u></p> <p><b>Attachment 2 (What Makes A Physician Network High-Performing? (2017)) at 1 of 5.</b></p>

These allegations of infringement are preliminary and are therefore subject to change.

10. Athena has and continues to induce infringement. Athena has actively encouraged or instructed others (e.g., its customers and/or the customers of its related companies), and continues to do so, on how to use its products and services (e.g., question and answer services on the Internet] and related services that provide question and answer services across the Internet such as to cause infringement of one or more of claims 1–23 of the '158 patent, literally or under the doctrine of equivalents. Moreover, Athena has known of the '158 patent and the technology underlying it from at least the date of issuance of the patent.

11. Athena has and continues to contributorily infringe. Athena has actively encouraged or instructed others (e.g., its customers and/or the customers of its related companies), and continues to do so, on how to use its products and services (e.g., question and answer services on the Internet] and related services that provide question and answer services across the Internet such as to cause infringement of one or more of claims 1–23 of the '158 patent, literally or under the doctrine of equivalents. Moreover, Athena has known of the '158 patent and the technology underlying it from at least the date of issuance of the patent.

12. Athena has caused and will continue to cause DatRec damage by direct and indirect infringement of (including inducing infringement of) the claims of the '158 patent.

#### **IV. JURY DEMAND**

DatRec hereby requests a trial by jury on issues so triable by right.

#### **V. PRAYER FOR RELIEF**

WHEREFORE, DatRec prays for relief as follows:



- a. enter judgment that Defendant has infringed the claims of the ‘158 patent through Athena.com, or a website linked thereto;
- b. award DatRec damages in an amount sufficient to compensate it for Defendant’s infringement of the ‘158 patent in an amount no less than a reasonable royalty or lost profits, together with pre-judgment and post-judgment interest and costs under 35 U.S.C. § 284;
- c. award DatRec an accounting for acts of infringement not presented at trial and an award by the Court of additional damage for any such acts of infringement;
- d. declare this case to be “exceptional” under 35 U.S.C. § 285 and award DatRec its attorneys’ fees, expenses, and costs incurred in this action;
- e. declare Defendant’s infringement to be willful and treble the damages, including attorneys’ fees, expenses, and costs incurred in this action and an increase in the damage award pursuant to 35 U.S.C. § 284;
- f. a decree addressing future infringement that either (i) awards a permanent injunction enjoining Defendant and its agents, servants, employees, affiliates, divisions, and subsidiaries, and those in association with Defendant from infringing the claims of the Patents-in-Suit, or (ii) awards damages for future infringement in lieu of an injunction in an amount consistent with the fact that for future infringement the Defendant will be an adjudicated infringer of a valid patent, and trebles that amount in view of the fact that the future infringement will be willful as a matter of law; and
- g. award DatRec such other and further relief as this Court deems just and proper.

Respectfully submitted,

**Ramey & Schwaller, LLP**

A handwritten signature in black ink, appearing to read 'WPR', with a large, stylized loop extending from the end of the signature.

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*Attorneys for DatRec, LLC*